DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-07-28,895

In re: 6645 Georgia Avenue N.W., Unit 211

Ward Four (4)

DREYFUSS MANAGEMENT, LLC
Housing Provider/Appellant

v.

BYRON BECKFORD AND TESAE HARRINGTON
Tenants/Appellees

DECISION AND ORDER

September 27, 2013

SZEGEDY-MASZAK, CHAIRMAN. This case is on appeal to the Rental Housing Commission (Commission) from a decision and order issued by the Office of Administrative Hearings (OAH) based on a petition filed in the Housing Regulation Administration (HRA) of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA).[1] The applicable provisions of the Rental Housing Act of 1985 (Rental Housing Act), D.C. LAW 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501- 2-510 (2001 Supp. 2008), and the District of Columbia Municipal Regulations (DCMR), 1 DCMR §§ 2800-2899 (2004), 1 DCMR §§ 2920-2941 (2004), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

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[1] The OAH assumed jurisdiction over tenant petitions from the DCRA pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE § 2-1831.01, -1831.03(b-1)(1) (2001 Supp. 2005). The functions and duties of the DCRA were transferred to DHCD by the Fiscal Year Budget Support Act of 2007, D.C. Law 17-20, 54 DCR 7052 (September 18, 2007) (codified at D.C. OFFICIAL CODE § 42-3502.03a (2001 Supp. 2008)). Accordingly, this case was transferred from the DCRA to OAH on March 8, 2007. *See* Martin, RH-TP-6-28,222 (OAH May 11, 2007) (Case Mgmt. Order) at 1.

I. PROCEDURAL HISTORY

On February 12, 2007, the Tenants/Appellees Byron Beckford and Tesae Harrington (Tenants), residents of 6645 Georgia Avenue, N.W., Unit 211 (Housing Accommodation), filed Tenant Petition (TP) RH-TP-07-28,895 (Tenant Petition) with DCRA, claiming that the Housing Provider/Appellant Dreyfuss Management, LLC (Housing Provider) violated the Act as follows:

1. A proper 30-day notice of rent increase was not provided before the rent increase became effective;

2. A rent increase was taken while their unit was not in substantial compliance with the D.C. Housing Regulations;

3. Services and/or facilities related to the unit were substantially reduced;

4. The Housing Provider took retaliatory action against them; and

5. A Notice to Vacate was served in violation of the Act.

Tenant Petition at 1-5; Record (R.) at 7-11.

On May 9, 2007, Administrative Law Judge (ALJ) Claudia Barber, issued a Case Management Order (CMO) scheduling a hearing for June 5, 2007. CMO at 1; R. at 24. Prior to the hearing, the Housing Provider retained counsel and filed a Motion to Continue the June 5, 2007 hearing. *See* Respondent's Motion to Continue at 1; R. at 27. The ALJ granted the Motion to Continue on June 11, 2007 and set a new hearing date for August 6, 2007. Harrington v. Dreyfuss Mgmt., LLC, RH-TP-07-28,895 (OAH June 11, 2007) (Order) at 1; (hereinafter "June 11 Order"). R. at 32-33. On August 6, 2007, both parties failed to appear for the hearing, and the ALJ dismissed the case with prejudice for failure to prosecute on August 31, 2007. Harrington, RH-TP-07-28,895 (OAH August 31, 2007) (Final Order) (hereinafter "August 31 Order") at 2-4; R. at 39-41.

The Tenants filed a "Notice of Appeal" with OAH on October 2, 2007, which the ALJ construed as a Motion to Vacate, stating they did not receive notice of the scheduled hearing.[2] "Tenants/Petitioner's Notice of Appeal" at 1 (hereinafter "Motion to Vacate"); R. at 44. Upon closer review, the ALJ determined that the June 11 Order scheduling the evidentiary hearing was sent to the Tenants at the incorrect zip code. Harrington, RH-TP-07-28,895 (OAH Nov. 2, 2007) (Order Vacating Final Order) at 1; R. at 50. Additionally, the ALJ noted that the Motion to Vacate was postmarked September 13, 2007, indicating that the Tenants would have timely filed it, and any discrepancy between the postmark date of the Motion to Vacate and the date the administrative court received it would be resolved in favor of the Tenants in these circumstances. *Id.* The ALJ granted the Tenants' Motion to Vacate and vacated the August 31 Order on November 2, 2007, then scheduled a new hearing for December 19, 2007. Order Vacating Final Order at 2; R. at 49.

Only Tenant Byron Beckford appeared for the hearing on December 19, 2007 – neither the Housing Provider nor the Housing Provider's counsel appeared. R. at 51. On December 21, 2007, the ALJ granted Tenant Beckford's request for a continuance to give his counsel an opportunity to appear. Harrington, RH-TP-07-28,985 (OAH Dec. 21, 2007) (Order Granting Second Continuance) at 1-2; R. at 55-56. The ALJ ordered a status conference for January 31, 2008. *Id.* The Tenant appeared at the status conference without counsel so the judge issued a second case management order (Second CMO) on February 1, 2008,[3] setting an evidentiary

[2] The Commission notes that the "Tenants/Petitioner's Notice of Appeal" was filed directly with OAH; no appeal of the ALJ's August 31, 2007 Order was filed with the Commission.

[3] At this point, the case caption changed the order in which the named parties are listed from "Harrington and Beckford" to "Beckford and Harrington." There is no indication in the record as to why the order of the parties changed, but the identity of the Tenants remains the same.

hearing for March 7, 2008. Second CMO at 1-2; R. at 67-68. As a result of a scheduling conflict on March 7, 2008, a notice of rescheduling was entered that same day and the hearing was rescheduled for April 21, 2008. Notice of Rescheduling at 1; R. at 73.

The ALJ issued a Final Order in this case on October 20, 2009: Harrington, RH-TP-07-28,895 (OAH Oct. 20, 2009) (Final Order). For the reasons set forth below, the ALJ sustained the Tenants' claims of an improper rent increase while the unit was not in substantial compliance with the D.C. housing regulations, claims of retaliation, and claim of services or facilities being substantially reduced. The remaining claims were dismissed with prejudice. The ALJ made the following findings of fact in the Final Order:[4]

A. Byron Beckford's Status as a Tenant

1. Tesae Harrington and Katesae Harrington[5] began leasing Unit 211 at the Property from a previous housing provider in July 1995. The Lease Agreement prohibits the subleasing of the apartment. Respondent's Exhibit "RX" 200, page 1.

2. Byron Beckford was previously married to Tesae Harrington and they began living in the apartment in 1998.

3. Tesae Harrington (hereinafter "Harrington") moved out of Unit 211 of the Property in 2006, making her primary residence elsewhere.

4. Harrington called an inspector from the Department of Consumer and Regulatory Affairs ("DCRA") to inspect the apartment, which took place on February 2, 2007. Petitioners' Exhibit "PX" 103.

5. Harrington attended the introductory seminar in which she was given the Information Binder concerning the conversion of the property to condominiums on November 29, 2005. Harrington also attended the progress meeting concerning the upgrade options within each unit of the Property on December 20, 2005. RXs 201 and 202.

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[4] The findings of fact are stated and numbered herein in the same manner that they were stated and numbered by the ALJ in the Final Order.

[5] The Commission notes, based on its review of the OAH hearing, that Katesae Harrington is Tenant Tesae Harrington's sister. *See* Hearing CD (OAH Jan 31, 2008). The Commission is satisfied, based on its review of the record, that Katesae Harrington is not a party to this case. *See* Final Order at 1; Tenant Petition at 1; R. at 11, 118.

6. Both the 120-day Notice of Condominium Conversion and the Notice of Rent Increase was [sic] addressed to Harrington. PXs 101, and 104, page 2. Tesae and Katasae [sic] Harrington signed the Relocation Agreement dated February 26, 2006, opting to take the buy- out [sic] and vacate the Property. RX 209.

7. A relocation check in the amount of $5,000 was made payable to the order of Tesae and Katasae [sic] Harrington, and they both endorsed the check. RX 211.

8. Byron Beckford has been making rental payments for use of Unit 211 for ten years. He provided proof that he paid $650 for rent in March of 2006. He also provided proof of payments of $652 for the months of January and February of 2007. All checks were made payable to Dreyfuss Management. PX 100.

B. Rent Increases

9. Tesae Harrington signed a lease agreement with the previous [h]ousing [p]rovider on July 27, 2005 to pay rent of $595 a month. RX 200, page 1.

10. In October 2005, Housing Provider/Respondent purchased the property, and the rent increased to $652 by at least February 2006, as evidenced by Byron Beckford's rent receipt dated March 29, 2006 in the amount of $650, and the rent payment ledger. PX 100, page 3 and PX 105.

11. On January 26, 2007, Housing Provider/Respondent sent Tenant/Petitioner a Notice of Increase of Rent Charged, to become effective on March 1, 2007. The rent increased from $652 to $692, and was based on Section 208(h)(2) of the Act[, D.C. OFFICIAL CODE § 42-3502.08(h)(2) (2001),] pertaining to the Consumer Price Index. PX 101.

C. Housing Code Violations and Reduction in Services and/or Facilities Claims

12. The Property consists of a building with three floors and a basement.

13. Housing Provider/Respondent purchased the Property in October 2005.

14. Kim Sperling is the Senior Project manager of Tenacity Group and has been working on this Property since October 2005. She and Charles Thomas, the property manager for the Housing Provider/Respondent, inspected the Unit in late November to early December of 2005. There was no specific testimony as to what problems were identified in that inspection, and what conditions in the unit were fixed as a result of the inspection.

15. The Housing Provider/Respondent contracts with a pest control company that sprays the Property twice a month. The company sprayed the common area and one different floor every time they visited.

16. Tenants/Petitioners noticed rats in the unit in December 2005. Harrington immediately informed landlord of this problem. The landlord laid traps, put black boxes inside the unit as well as outside of the building, and sprayed foam inside the unit. This did not immediately quell the infestation, but the rats eventually went away. There was no testimony as to the duration of the infestation.

17. In late January to early February of 2006, the Housing Provider hired a construction company to renovate the Property in preparation of the condominium conversion. The construction company began the onsite construction in late January to early February of 2006, and completed construction in 12 to 16 months. The construction company was also responsible for fixing any repairs that tenants requested. Tenants had to make the request to property management, and management would then instruct the construction workers to complete the repairs. Kim Sperling oversaw the construction.

18. As part of the condominium conversion, there were renovations of the common areas. New plumbing risers and new mailboxes for the tenants were installed. The common area was repainted and new carpet installed. Old laundry machines were replaced with newer machines within the Property's laundry facility. Also a new front door and an automated system in the entranceway of the Property were installed.

19. On March 4, 2006 Harrington signed the Relocation Agreement opting to take the buy out [sic] and vacate the property by May 23, 2006. RX 209[.]

20. In April 2006, Harrington asked the Housing Provider whether the Housing Provider would fix the ceilings within her unit, and that person told her not to worry about that because she was leaving.

21. On May 19, 2006 Harrington informed Lula Quadros, the customer service representative for the Housing Provider, about some of the problems in her apartment. Specifically, Tenant/Petitioner told Quadros about the mold growing in the bathroom, the plastic in the kitchen that was coming up, the mold growing under the window of one of the bedrooms, and told her that the refrigerator needed to be replaced. She also complained about the water leaks in the unit. The landlord said they were going to schedule someone to come up and look at the unit, but no one ever showed up.

22. As previously mentioned, on January 26, 2007, a Notice of Increase in Rent Charged was sent to Tenant/Petitioner, increasing the rent of the unit from $652 to

$692. The rent was also increased from $595 in 1995 to $652 in February 2006. PX 105.

23. On February 2, 2007, DCRA Inspector Stephanie Dodson conducted an inspection of the Tenants/Petitioners' unit.

24. As a result of that inspection, the inspector issued a notice of housing violation (No. 11507115) to the Housing Provider to correct cracks in the ceilings of the cooking room, bathroom, rear sleeping room, and the eating room. Loose or peeling paint in the ceiling needed to be repainted. Also the Housing Provider was to correct a hole in the wall of the bathroom, and another hole in the ceiling of the eating room. A cabinet and baseboard in the cooking room had broken or had missing parts that needed to be repaired. The Housing Provider was given 15 days to correct theses [sic] violations before re-inspection and further action would be taken. PX 103, page[s] 1-3.

25. On February 2, 2007, the inspector issued a second notice of violation (No. 1150717) to the Housing Provider to correct a defective electrical light ceiling fixture. The Housing Provider was given 7 days to correct this violation before re-inspection and further action would be taken. PX 103, page[s] 4-5.

26. On February 2, 2007, the inspector issued a third notice of violation (No. 1150711) to the Housing Provider to correct the quantity of water in the bathroom of the unit, as it was not being provided in the quantity necessary for normal occupancy. The defective cooking facility also needed to be corrected. The Housing Provider was given 1 day to correct these violations before re-inspection and further action would be taken. PX 103, page[s] 6-7.

27. In May 2007, the leakage from the ceilings stopped.

28. On March 7, 2008, Tenant/Petitioner Harrington took photographs of the conditions within the apartment. PX 102. Tenant/Petitioner Harrington represented that the pictures show the missing floorboards and the cracks in the wall that DCRA inspector Dodson identified in her notices of violations issued on February 2, 2007. I find that the pictures accurately depict the existing conditions of the unit on February 2, 2007, the day of Inspector Dodson's inspection. I also find that the conditions existed for a prolonged period of time, i.e. eleven months since the rent increased as of February 1, 2006 to $652. PX 105.

D. Improper Thirty-Day Notice of Rent Increase

29. The January 26, 2007 Notice of Increase did not become effective until March 1, 2007. PX 101. Tenants/Petitioners received this notice. The rent increase was based on Section 208(h)(2) of the Act[, D.C. OFFICIAL CODE § 42-3502.08(h)(2) (2001),] pertaining to the Consumer Price Index.

E. Tenant/Petitioner's Claims of Retaliation

30. On March 4, 2006, Tenant/Petitioner Harrington signed a Relocation Agreement, opting to take the buy-out and vacate the Property, in anticipation of the Property's conversion into condominiums. RX 209.

31. In April 2006, Tenant/Petitioner Harrington asked the Housing Provider whether the construction workers were going to fix the ceilings within the unit while the on-site construction was taking place on the property. Housing Provider told her not to worry about the conditions because Harrington was leaving.

32. On May 19, 2006, Tenant Petitioner Harrington complained to Lula Quadros, the customer service representative about the conditions within her unit. (See Findings of Fact Paragraph No. 21.)

33. On January 26, 2007, Housing Provider sent Tenant/Petitioner a Notice of Increase of Rent Charged, increasing the rent from $652 to $692. PX 101.

F. Improper Notice to Vacate Given in Violation of Section 501 of Act [(D.C. OFFICIAL CODE § 42-3505.01 (2001))]

34. On June 19, 2006, Tenant/Petitioner received a Notice of Condominium Conversion from Housing Provider. The notice served as the Tenant/Petitioner's 120-day Notice of Intent to Convert.

35. According to the language of the notice, Tenant/Petitioner had 60 days to decide whether to enter into contract and purchase the apartment. If Tenant/Petitioner decided not to purchase the unit in which they resided, the Notice of Intent to Convert then served as a 30-day Notice to Vacate. The 30-day Notice to Vacate began on the 91st day of the Notice of Intent to Convert.

36. Tenant/Petitioner Harrington chose to sign a relocation agreement and accept payment of $5,000 from Housing Provider/Respondent. RX 209-210.

37. However, Tenant/Petitioner Byron Beckford continued to make rental payments to Housing Provider/Respondent, which Housing Provider/Respondent accepted and cashed. Beckford continues to reside in Unit 211.

Final Order at 3-10; R. at 109-16. The ALJ made the following Conclusions of Law in the Final Order:[6]

A. Byron's Standing as a Tenant

1. The Housing Provider/Respondent asserts that Byron Beckford does not have standing in these proceedings and therefore is not entitled to the relief he requests. I conclude that Beckford is protected under the Act as a tenant. The Act defines a tenant as a "tenant, subtenant, lessee, sublesee [sic], or other person entitled to the possession, occupancy, or the benefits of any rental unit owned by another person." D. C. [sic] OFFICIAL CODE § 42-3501.03(36) [(2001)]. A landlord-tenant relationship does not arise by mere occupancy of the premises. There must exist an express or implied contractual agreement, with both privity of estate and privity of contract. *Nicholas v. Howard*, 459 A.2d 1039, 1040 (D.C. 1983). Rent payment and receipt is evidence of an implied contractual agreement between a landlord and tenant. *Dias v. Perry*, TP 24,379 (RHC Apr. 20, 2001). To determine whether a landlord-tenant relationship exists, the trier of fact must consider all of the circumstances surrounding the use and occupancy of the property. *Young v. District of Columbia*, 75 A.2d 138,[ ]143 (D.C. 2000). These circumstances include the lease agreement, the payment of rent, and other conditions of the occupancy between the parties. *Anderson v. William J. Davis, Inc.*, 553 A.2d 648, 649 (D.C. 1989).

2. As noted, Byron Beckford is a tenant as defined within the Act. The evidence to support his contention that he is a tenant are three rent payment receipts from March of 2006, and January and February of 2007. The production of three rent receipts is sufficient evidence to support the existence of a landlord-tenant relationship. Beckford also testified that he lived in Unit 211 since 1998 and has been paying rent for the unit for over ten years.

3. Furthermore, Beckford is a former spouse living with his wife. Tesae and Ketasae [sic] Harrington signed the lease agreement, and they are tenants as well within the meaning of the Act until 2006 when Harrington moved out. However, when the husband and wife separated, Beckford remained a lawful tenant of the subject premises because he continued to occupy Unit 211 and pay rent, which the Housing Provider/Respondent accepted, including the rent increases from $595 to $652. PX 100 and 105 containing Housing Provider's rent payment ledger.

B. Tenant's Claim of an Improper 30-Day Notice of Rent Increase

[6] The Conclusions of Law are recited here using the same language as in the Final Order; the Commission, in its discretion, has numbered the ALJ's paragraphs for the sake of clarity, efficiency, and accuracy. *See* Ahmed, Inc. v. Avila, RH-TP-28,799 (RHC Oct. 9, 2012) at n.8; Levy v. Carmel Partners, Inc., RH-TP-06-28,830; RH-TP-06-28,835 (RHC Mar. 19, 2012) at n.9.

4. Tenant/Petitioner's first claim that a proper 30-day Notice of Rent Increase was not provided before the rent increase became effective was dismissed on the record. At the end of Tenant/Petitioner's case, the Housing Provider requested judgment on the first claim of an improper 30-Day Notice of Rent Increase. I construed that request as a motion to dismiss that claim, and I granted the motion to dismiss on the record.

5. The controlling regulation that governs this claim is 14 [§] DCMR 4205.4(a) [(2004)], which states in pertinent part:

> 4205.4 A housing provider shall implement a rent adjustment by taking the following actions, and no rent adjustment shall be deemed properly implemented unless the following actions have been taken:
>
> (a) The housing provider shall provide the tenant of the rental unit not less than thirty (30) days written notice, pursuant to § 904 of the Act, in which the following items shall be included:
>
> (1) The amount of the rent adjustment;
>
> (2) The amount of the adjusted rent;
>
> (3) The date upon which the adjusted rent shall be due; and
>
> (4) The date and authorization for the rent ceiling adjustment taken and perfected pursuant to § 4204.9.

6. Also § 42-3509.04(b) of the D.C. OFFICIAL CODE [(2001)] provides:

> (b) No rent increases, whether under this chapter, the Rental Accommodations Act of 1975, the Rental Housing Act of 1977, the Rental Housing Act of 1980, or any administrative decisions issued under these act [sic], shall be effective until the first day on which rent is normally paid occurring more than 30 days after notice of the increase is given to the tenant.

7. Tenant/Petitioner offered no testimony in support of this claim. To the contrary, the Notice of Increase in Rent Charged was served on January 26, 2007, and it did not go into effect until March 1, 2007. PX 101. Tenant/Petitioner conceded that she received the Notice before the rent increase went into effect on March 1, 2007. The notice included all of the required information pursuant to 14 DCMR [§] 4205.05(a) [(2004)]. Moreover, Tenant/Petitioner offered the Notice of Increase of Rent Charged as an exhibit, thus supporting my finding that she received a 30-day notice before the rent increase became effective. Therefore,

this claim is dismissed with prejudice and judgment is entered in favor of the Housing Provider/Respondent on this claim.

C. Tenant's [sic] Claim that a Rent Increase was Taken While the Unit Was Not in Substantial Compliance with the D.C. Housing Regulations.

8. Tenants/Petitioners have sufficiently proven their second claim that a rent increase was taken while the unit was not in substantial compliance with the D.C. Housing Regulations. The controlling statute that governs this claim is D.C. OFFICIAL CODE § 42-3502.08 (a)(1) [(2001)], which states:

> (a)(1) Notwithstanding any provision of this chapter, the rent for any rental unit shall not be increased above the base rent unless:
>
> > (A) The rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be limited to housing regulation violation notices issued by the District of Columbia Department of Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures.

9. D.C. OFFICIAL CODE § 42-3501.03(35) [(2001)] defines a substantial violation as "the presence of any housing condition, the existence of which violates the housing regulations or any other statute or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property."

10. Also 14 DCMR [§] 1416.2 [sic] [(2004)] states:[7]

> For the purposes of this subtitle, "substantial compliance with the housing code" means the absence of any substantial housing violations as defined in § 103(35) of the Act including, but not limited to, the following:
>
> > (a) Frequent lack of sufficient water supply;
> >
> > (b) Frequent lack of hot water;
> >
> > (c) Frequent lack of sufficient heat;

[7] The Commission observes that the regulation quoted in this section of the Final Order is located at 14 DCMR § 4216.2 (2004), not 14 DCMR § 1416.2, as erroneously stated by the ALJ.

(d) Curtailment of utility service, such as gas or electricity;

(e) Defective electrical wiring, outlets or fixtures;

(f) Exposed electrical wiring or outlets not properly covered;

(g) Leaks in the roof or walls;

(h) Defective drains, sewage system, or toilet facilities;

(i) Infestation of insects or rodents;

(j) Lead paint on the interior of the dwelling, or on the exterior of the dwelling where the paint is in a location or a condition which creates a hazard of lead poisoning to children or the occupants;

(k) Insufficient number of acceptable exits for a dwelling, or from each [f]loor of a rooming house;

(l) Obstructed exits;

(m) Accumulation of garbage or rubbish in common areas;

(n) Plaster falling or in immediate danger of falling;

(o) Dangerous porches, stairs, or railings;

(p) Floor, wall, or ceilings with substantial holes;

(q) Doors, or windows insufficiently tight to maintain the required temperature or to prevent excessive heat loss;

(r) Doors lacking required locks;

(s) Fire hazards or absence of required fire prevention or fire control;

(t) Inadequate ventilation of interior bathrooms; and

(u) Large number of housing code violations, each of which may be either substantial or non-substantial, the aggregate of which is substantial, because of the number of violations.

4216.4 For the purposes of § 4216.3(a), the Rent Administrator [now Administrative Law Judge] shall find abatement of all substantial housing code violations upon certification of abatement by the

housing inspector, or the affected tenant, or the housing provider; provided that upon that certification of abatement by the housing provider the affected tenant has been given ten (10) days[']] notice of and opportunity to contest the certification.

4216.5 Evidence of substantial violations of the housing code may be presented to a hearing examiner by the testimony of parties, except that no tenant complaints of substantial violations shall be received in evidence in any hearing if the conditions giving rise to the complaint occurred and were abated more than twelve (12) months previously.

4216.6 Tenant testimony may be supported by photographs or other documentary evidence, written Department of Consumer and Regulatory Affairs violation notice(s), or the testimony of a Department of Consumer and Regulatory Affairs official who has personally inspected the rental property.

4216.7 Testimony shall be as detailed as necessary so that the hearing examiner can make findings of fact that will identify the specific violation(s), their location and duration, and whether they have been abated. Based upon such testimony, the examiner shall determine if the violations are substantial.

11. In order to establish this claim, Tenant/Petitioner must first prove that the Housing Provider was put on notice of the existing conditions within the unit. *William Calomiris Inv. Corp*[.] *v. Milam*, TP 20,144, 20,160, 20,248 (RHC Apr. 26, 1989) at 10; *See also Gavin v. Fred A. Smith Co.*, TP 21,918 (RHC Nov. 18, 1992) at 4.

12. On May 19, 2006, Tenant/Petitioner Harrington complained to customer service representative, Lula Quadros, about the conditions within the unit and requested repairs. Harrington testified that no one came up to the unit to make the repairs. Lula Quadros was not brought to testify as to what specific conditions Tenant/Petitioner complained of, but Tenant/Petitioner claims that she complained of the same conditions that were later identified by DCRA inspector Dodson in 2007. In addition to those conditions, Tenant/Petitioner Harrington complained that the water was leaking from the ceiling, that she found mold in one of the bedrooms as well as in the bathroom, and that the refrigerator in the kitchen needed to be replaced.

13. The rent increase that was sent to the Tenants/Petitioners was to become effective March 1, 2007. However, another rent increase took effect in February 2006, PX 105, which increased the original rent of $595 to $652. Before these rent increases became effective, DCRA Inspector Dodson identified, in three notices

of violations, PX 103, the following conditions in need of repair in the unit as of February 2, 2007:

1) Wall in bathroom has crack(s) with separation of parts;

2) Floor in bathroom has hole(s);

3) Cabinet in cooking room has broken or missing parts;

4) Baseboard in cooking room has broken or missing parts;

5) Ceiling in cooking room has crack(s);

6) Wall in eating room has crack(s) with separation of parts;

7) Ceiling in eating room has hole(s);

8) Ceiling in eating room has crack(s);

9) Ceiling in rear sleeping room has loose or peeling paint or covering which shall be removed and the surface so exposed shall be repainted or recovered;

10) Ceiling in rear sleeping room has crack(s);

11) Electrical ceiling light fixture in cooking room is defective;

12) Water in bathroom is not being provided in the quantity needed for normal occupancy;

13) Cooking facility in cooking room is defective.

14. Tenant/Petitioner also offered photographs, PX 102, identifying them as reflecting the conditions of the unit since 2005. She also testified that the violations that the inspector identified existed in 2005. Harrington had inconsistent testimony as to whether any of the conditions she complained of were fixed. She claims numerous times in her testimony nothing was fixed, but she conceded that whenever there was a leak in the ceiling it was fixed. Harrington further stated that the leak started in 2006, and stopped in May 2007, which is after this petition was filed and after Harrington moved out of the unit. Because of these inconsistencies, I find that Harrington has not proved that there were leaks in the roof or walls. However, I also find that Tenant/Petitioner has sufficiently proved that the floor, walls and ceilings had substantial holes based on her testimony and the photographs. PX 102. Holes in the ceiling and in the floor of the bathroom were also identified by Inspector Dodson.

15. Additionally, Harrington testified that in 2005, she saw rats in the unit and that the Housing Provider sprayed the unit and laid traps, causing the rats to eventually go away. Because she was not specific as to the duration of the infestation, I find that Harrington has not sufficiently proven that there was an infestation of insects or rodents for a specific period of time. However, because the aforementioned housing violations that I found she has proven, and because there were 13 housing violations that the DCRA inspector found to exist, I find that the aggregated number of violations places the unit in substantial noncompliance with the housing code pursuant to 14 DCMR [§] 1416.2 [sic] [(2004)].[8]

16. In light of Harrington's testimony that she informed the Housing Provider of the repairs needed both in April and May of 2006, I conclude that the Housing Provider was put on notice of the conditions at the time the rent increase went into effect in February 1, 2006 and the conditions were substantial. PX 102, 103, and 105. Although witness Kim Sperling for the Housing Provider testified generally that all problems that were brought to the attention of the property management were repaired within 72 hours of the request, there is no certificate of abatement to support that contention, nor did the witness offer testimony as to what conditions specifically had been repaired. Rather, there are pictures as well as testimony offered by Tenant/Petitioner Harrington supporting her assertion that nothing was fixed after the requests were made. Tenants/Petitioners have met their burden of proving by a preponderance of the evidence that a rent increase was taken while the unit was not in substantial compliance with DC Housing Regulations.

17. Therefore, Tenant/Petitioner Beckford is entitled to rent refunds for the illegal rent increase that was reflected in rent paid in February 2006, of $692. PX 105. This rent increase from $595, as of August 1995, to $695 [sic] as of February 1, 2006, was invalid given the substantial housing code violations. Accordingly, I am rolling back the rent beginning February 1, 2006 from $692 to $595. The rollback is effective February 1, 2006 through February 12, 2007, the date the tenant petition was filed with the Rental Accommodations Division ("RAD"). That is, Tenant/Petitioner Beckford is entitled to a rent refund of $97 x 12 months = $1,164, plus $41.71 for the prorated time period of February 1 through 12, 2007. Total rollback of rent involving this claim is $1,205.71 (rounded to $1206). Interest calculations under 14 DCMR [§] 3826.2 [(2004)] are calculated from the date of the violation to the date of the issuance of the decision. 14 DCMR [§] 3826.2 [(2004)] . . . .[9]

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[8] *See supra* at 11 n.7.

[9] A recitation of the ALJ's interest calculations, contained on page 18 of the Final Order, is omitted from the Commission's Decision and Order. Final Order at 18; R. at 101.

D. Tenant's [sic] Claims that Services and/or Facilities Were Substantially Reduced in Violation of Section 211 of the Act [(D.C. OFFICIAL CODE § 42-3502.11 (2001))].

18. Tenants' second claim is that services and/or facilities within their unit were substantially reduced. The services and facilities provision of the Act before August 2006, D.C. OFFICIAL CODE § 42-3502.11 (2001), provides:

> If the Rent Administrator [Administrative Law Judge] determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator [Administrative Law Judge] may increase or decrease the rent ceiling, as applicable, to reflect proportionately the value of the change in services or facilities.

19. The services and facilities provision of the Act after August 2006, D.C. OFFICIAL CODE § 42-3502.11 (2001) provides:

> If the Rent Administrator [Administrative Law Judge] determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator [Administrative Law Judge] may increase or decrease the rent charged, as applicable, to reflect proportionately the value of the change in services or facilities.

20. Also, the controlling Regulation is 14 DCMR [§] 4211.6 [(2004)], which states in pertinent part:

> If related services or facilities at a rental unit or housing accommodation decrease by accident, inadvertence or neglect by the housing provider and are not promptly restored to the previous level, the housing provider shall promptly reduce the rent for the rental unit or housing accommodation by an amount which reflects the monthly value of the decrease in related services or facilities.

Also, D.C. OFFICIAL CODE [§§] 42-3501.03(26), (27) [(2001)] gives [sic] the definition[s] of a "related facility" and "related services":

> (26) "Related facility" means any facility, furnishing, or equipment made available to a tenant by a housing provider, the use of which is authorized by the payment of the rent charged for a rental unit, including any use of a kitchen, bath, laundry facility, parking facility, or the common use of any common room, yard, or other common area.

(27) "Related services" means services provided by a housing provider, required by law or by the terms of a rental agreement, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, air conditioning, telephone answering or elevator services, janitorial services, or the removal of trash and refuse.

21. In order to establish the claim that a related facility or service has been substantially reduced, the tenant must prove that they put the Housing Provider on notice of the necessary repairs. *Offong v. American* [sic] *Security* [sic] *Bank*, TP 21,087 (RHC Jan[.] 11, 1990) at 5. Tenant must also produce evidence establishing the existence, duration, and severity of the reduced services or facilities. *Lane v. Regina Davis/J.E.S. Enter.*, TP 24,841 (RHC Sept. 30, 2002) at 8.

22. I find that the only "related facility," as defined by the Act, that Tenant/Petitioner complained of in her tenant petition, as well as in her testimony was the refrigerator. Harrington alleged that the refrigerator needed to be replaced and she had to put tape on the door of the refrigerator to keep the cold air inside. She testified that this condition, along with the other conditions she complained of to Lula Quadros in May 2006, existed since 2005 and existed at the time she filed this petition. Harrington also offered pictures that were taken on March 7, 2008, that she represented as the conditions of the unit since 2005. Therefore I find that Tenant/Petitioner has established that she put the Housing Provider on notice as to the necessary repairs needed for the refrigerator, and that she established the existence, duration, and severity of the reduced facility.

23. The Rental Housing Commission has held consistently that the hearing examiner, now administrative law judge, is not required to assess the value of a reduction in services and facilities with "scientific precision," but may instead rely on his or her "knowledge, expertise, and discretion as long as there is substantial evidence in the record regarding the nature of the violation, duration, and substantiality." *Kemp v. Marshall Heights Cmty.* [sic] *Dev.*, TP 24,786 (RHC Aug. 1, 2000) at 8 (*citing Calomiris v. Misuriello*[,] TP 4809 (RHC Aug. 30, 1982) and *Nicholls v. Tenants of 5005, 07, 09 D Street, S.E.*, TP 11,302 (RHC Sept. 6, 1985)). It is not necessary for an administrative law judge to receive expert testimony or precise evidence concerning the degree to which services and facilities have been reduced in order to compensate tenants for the value of the reduced services. "[E]vidence of the existence, duration and severity of a reduction in services and/or facilities is competent evidence upon which the [judge] can find the dollar value of a rent roll back." *George I. Borgner, Inc. v. Woodson*, TP 11,848 (RHC June 10, 1987) at 11.

24. In compliance with this provision, I will assign a value of $20 per month for the defective refrigerator. I will therefore roll back Tenant/Petitioner Beckford's rent by $20 per month from May 2006 through February 12, 2007, the date of the filing of the tenant petition. This is 9 months x $20 = $180 reduction in rent, plus $8.60 for the prorated period in February 2007. Total reduction in rent is $188.60 for the defective refrigerator. Again, interest calculations under 14 DCMR [§] 3826.2 [(2004)] are calculated from the date of the violation to the date of the issuance of the decision. 14 DCMR [§] 3826.2 [(2004)] . . . .[10]

25. The only "related service" that Tenant/Petitioner complained of was the pest control. She claimed that she saw rats in 2005 and immediately notified the Housing Provider. The Housing Provider sent someone to spray the unit and lay rat traps and the rats eventually went away. Because Tenant/Petitioner did not specify the duration of the infestation, she has not met the burden of proving that there was a substantial reduction in a related service. *Lane v. Regina Davis/J.E.S. Enter., supra.*

E. Tenant's [sic] Claim of Retaliation

26. Tenants contend that the Housing Provider retaliated against them after they made complaints about the repairs that were needed within their unit. D.C. OFFICIAL CODE § 42-3505.02 [(2001)] discusses the issue of retaliatory actions, and states in pertinent part:

> (a) No housing provider shall take any retaliatory action against any tenant who exercises any right conferred upon the tenant by this chapter, by any rule or order issued pursuant to this chapter, or by any other provision of law. Retaliatory action may include any action or proceeding not otherwise permitted by law which seeks to recover possession of a rental unit, action which would unlawfully increase rent, decrease services, increase the obligation of a tenant, or constitute undue or unavoidable inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service, any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause, or any other form of threat or coercion.
>
> (b) In determining whether an action taken by a housing provider against a tenant is retaliatory action, the trier of fact shall presume retaliatory action has been taken, and shall enter judgment in the tenant's favor unless the housing provider comes forward with clear and convincing evidence to

[10] A recitation of the ALJ's interest calculations, contained on page 21-22 of the Final Order, is omitted from the Commission's Decision and Order. Final Order at 21; R. at 97-98.

rebut this presumption, if within the 6 months preceding the housing provider's action, the tenant:

(1) Has made a witnessed oral or written request to the housing provider to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations...

(5) Made an effort to secure or enforce any of the tenant's rights under the tenant's lease or contract with the housing provider.

27. The Act provides that if 1) the tenant has made a witnessed oral or written request to the housing provider to make repairs which are necessary in order to comply with housing regulations or exercised a right conferred to them as a tenant, and 2) within 6 months after the tenant's action the housing provider takes a retaliatory action against the tenant as defined within the [A]ct, and 3) the housing provider does not offer clear and convincing evidence to rebut the claim, the Administrative Law Judge can presume that a retaliatory action occurred.

28. Here, Tenant/Petitioner signed a Relocation Agreement opting to take the buy out [sic] and vacate the Property by May 23, 2006, which was signed March 4, 2006. RX 209. As a tenant, Harrington was exercising her rights under a contract with the Housing Provider to take the buy out [sic] and vacate at a later date. According to the Tenant/Petitioner Harrington's testimony, she asked in April 2006 whether they were going to fix the ceilings, and she was told that she should not worry about that because she was leaving. However, in later testimony, Harrington conceded that whenever the ceiling leaked, that it was fixed. Therefore I find that the Housing Provider did initially deny the maintenance service, but did not decrease maintenance services because the ceiling was fixed. Because the service was not decreased as a result of Tenant/Petitioner's request I find that the initial denial of services does not constitute retaliatory action.

29. However, I do find that there was a decrease of services after Harrington complained to Lula Quadros on May 19, 2006. Harrington testified that she was told that someone would come and make the repairs that she requested, but no one ever came to make the repairs. Also, Harrington offered testimony and pictures that certain conditions existed in her apartment since 2005. PX 102. As mentioned before, the onsite construction on the Property began in late January to early February of 2006, and was finished in 12-16 months. Construction workers were to make repairs per the request of tenants. However no one made the repairs requested, as evidenced through the testimony given, and the pictures taken by Harrington, and the DCRA inspection report. PX 102-103. Therefore, I find that the nearly nine month period after Harrington made the request in May 2006 until the time this petition was filed, there was a decrease in services. Kim Sperling, witness for the Housing Provider, testified that whenever there was a maintenance

request, the repairs were taken care of within 72 hours. However, Sperling never stated what requests were made, or when these conditions were repaired. For that reason, I find that the Housing Provider did not satisfy its burden of proving through clear and convincing evidence no retaliatory action was made. Therefore I presume that there was retaliatory action taken against Tenant/Petitioner Harrington after she complained to management about the conditions of her apartment, and I am entering judgment in the Tenant/Petitioner's favor on that claim.

F. Tenant's [sic] Claim of Improper Notice to Vacate

30. The tenant's [sic] last claim is that a Notice to Vacate was served in violation of §501 of the Act. D.C. OFFICIAL CODE § 42-3505.01(j) [(2001)] controls this claim and provides that "[i]n any case where the housing provider seeks to recover possession of a rental unit or housing accommodation to convert the renal [sic] unit or housing accommodation to a condominium or cooperative, notice to vacate shall be given according to § 42-3402.06(c).["] D.C. OFFICIAL CODE § 42-3402.06(c) [(2001)] states that "[a]n owner shall not serve a notice to vacate until at least 90 days after the tenant received notice of intention to convert, or prior to expiration of the 60-day period of notice of opportunity to purchase." Moreover, § 42-1904.08(b)(3) of the D.C. OFFICIAL CODE [(2001)] discusses notices to vacate within a notice of conversion:

> (b) In the case of a conversion condominium:
>
> > (3) If a notice of conversion specifies a date by which the apartment unit shall be vacated, then such notice shall constitute and be the equivalent of a valid statutory notice to vacate. Otherwise, the declarant shall give the tenant or subtenant occupying the apartment unit to be vacated the statutory notice to vacate where required by law in compliance with the requirements applicable thereto.

31. Here, the Notice of Intent to Convert was received by the Tenant/Petitioner on June 19, 2006. PX 104, page 2. I find that the Notice on [sic] Intent to Convert serves as a proper Notice to Vacate. The Notice to Convert maintains that if the Tenant/Petitioner chooses to not purchase the unit in which they reside, then the Notice of Intent to Convert becomes a 30-day Notice to Vacate. The Notice of Intent to Convert further maintains that the 30-day Notice to Vacate would begin on the 91st day of the Notice to Convert. Therefore, I find that the Notice of Intent to Convert specifies the date in which the Tenant/Petitioner was to vacate, and serves as a valid Notice to Vacate pursuant to § 42-1904.08(b)(3) of the D.C. OFFICIAL CODE. Furthermore, the Notice to Vacate within the Notice to Convert also complies with § 42-3402.06(c) of the D.C. OFFICIAL CODE as the 30-day Notice to Vacate does not begin until the 91st day of the Notice to Convert, thus giving the tenant at least 90 days after they received the Notice to Convert to

serve the Notice to Vacate. Therefore, I find that a 30-day Notice to Vacate was properly served on the Tenant/Petitioner. Judgment will be entered in favor of the Housing Provider/Respondent on this claim.

G. Housing Provider/Respondent is Subject to Statutory Penalties for Its Violations of the Act

32. D. C. [sic] OFFICIAL CODE § 42-3509.01(a) [(2001)] authorizes an administrative law judge to impose a fine against a Housing Provider for violations of the Act. The controlling statute governing penalties for violation[s] of the Act before August 2006, is D.C. OFFICIAL CODE § 42-3509.01(a) [(2001)], which provides:

    (a) Any person who knowingly...(2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent ceiling or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

    (b) Any person who willfully...(3) commits any other act in violation of any provision of this chapter...shall be subject to a civil fine of not more than $5,000 for each violation.

33. The controlling statute governing penalties after August 2006 provides:

    (a) Any person who knowingly...(2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator or Rental Housing Commission, as applicable, for the amount by which the rent exceeds the applicable rent charged or for treble that amount (in the event of bad faith) and/or for a roll back of the rent to the amount the Rent Administrator or Rental Housing Commission determines.

34. Tenants/Petitioners met their burden of proof by a preponderance of the evidence that the rent increase taken in 2006 was in violation of the Act. D.C. OFFICIAL CODE § 42-3502.08 [(2001)]. Tenant/Petitioner also met her burden of proof that services and facilities were reduced in violation of the Act, and that the Housing Provider committed retaliatory action against Tenants/Petitioners after Harrington complained about the conditions of the Property.

35. To subject a Housing Provider to penalties under the Act, there must first be a finding that the Housing Provider's conduct in imposing illegal rent increases, substantially reducing services and facilities, and retaliating against Tenants/Petitioners was knowing. I reach this conclusion of knowing conduct on

behalf of the Housing Provider because the Housing Provider was placed on notice of the house code violations by the DCRA inspector and also by the Tenant/Petitioner on May 19, 2006, when Harrington complained to Lula Quadros who was not available to rebut the testimony of Harrington. Harrington clearly and convincingly testified that no one came to make the repairs, and the conditions depicted in the photographs, PX 102, are the same conditions that existed in 2005. Housing Provider also did not provide any abatement notices indicating the notices of housing code violations issued by Inspector Dodson were ever abated. Therefore, these repairs existed for a prolonged period of time of at least nine months. Such inaction on the part of the Housing Provider warrants imposition of the fines for a willful violation of the Act.

36. The Housing Provider's actions in failing to fully eradicate the problem since 2005 did rise to the level of being willful, and a reckless disregard for maintaining and leasing an apartment in sanitary condition, *i.e.* intentional violation of the law, deliberate and the product of conscious choice. *Borger Mgmt*[.], *Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004).

37. To impose such a fine, the Act requires that the violation in question be "willful." Willfulness, in turn, requires more than mere violation of the Act. It requires that the Housing Provider "intended to violate or was aware that it was violating a provision of the Rental Housing Act." *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005). Tenant must show that Housing Provider intended to violate the law or possessed a culpable mental state. *Quality Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 76, n.6 (D.C. 1985). Housing Provider's inaction warrants imposition of the fines for a willful violation of the Act. The Housing Provider's actions in failing to fully eradicate the problem since 2005 did rise to the level of being willful, and a reckless disregard for maintaining and leasing an apartment in sanitary condition, i.e. intentional violation of the law, deliberate and the produce [sic] of a conscious choice. *Borger Mgmt*[.], *Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004).

38. I reach this conclusion of willfulness based on the failure to make extensive repairs, *i.e.* defective walls and ceilings with cracks, defective refrigerator etc., that remained unattended for a nine month period after being notified by the Tenant and the D.C. housing inspectors. I will impose a civil fine of $5,000 for the substantial housing code violations, services and facilities that were reduced, and for the incomplete repairs lasting from 2006-2007. This is because the Property was not in substantial compliance with D.C. housing regulations due to unattended repairs. I will also impose another $2,000 in fines for taking the illegal rent increase in 2006. Since the second rent increase did not take effect until March 2007, which was after the tenant petition was filed, no penalty will be assessed for the rent increase in 2007. Finally, I will impose another $2,000 fine for Housing Provider's retaliatory conduct in failing to fix the repairs for a period

of nine months. Such conduct is egregious and warrants sanctions to deter future conduct of this nature. Statutory penalties total $9,000.

Final Order at 10-29; R. at 90-109.

The Housing Provider filed a timely Motion for Reconsideration on November 4, 2009, arguing that the Tenant's claims are barred by res judicata because the Landlord and Tenant Branch of the Superior Court of the District of Columbia (hereinafter "Landlord & Tenant Court") already entered a final judgment on the same cause of action between the two parties.[11] Respondent's Motion for Reconsideration at 1; R. at 194. Additionally, on November 4, 2009, the Housing Provider filed a Motion to Vacate based on res judicata. Motion to Vacate at 1-2; R. at 269-70.

The ALJ issued an order denying both of the Housing Provider's motions on December 28, 2009.[12] *See* Order Denying Reconsideration and Stay at 1-6; R. at 278-83. The ALJ also issued an Amended Final Order on December 28, 2009, Harrington, RH-TP-07-28,895 (OAH Dec. 28, 2009) (Amended Final Order), in order to clarify her findings regarding willful violations based on a recent Rental Housing Commission decision. Amended Final Order at 1 n.1; R. at 318.

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[11] The Commission notes that the Housing Provider's Motion for Reconsideration asserted that on January 5, 2007 and January 18, 2007, the Housing Provider filed two separate actions against the Tenant for non-payment of rent and for possession of real estate based on the expiration of a 120 day notice to vacate for conversion to condominium, respectively. Respondent's Motion for Reconsideration at 3-5; R. at 190-92. The Housing Provider contended that the final judgment in the Landlord and Tenant Court entered on September 9, 2008 in favor of the Housing Provider precluded the Tenant from now raising a claim that the Tenant could have, but did not raise as a defense in the Landlord and Tenant Court proceedings, such as a defense of retaliatory action or substandard housing conditions. Respondent's Motion for Reconsideration at 5-9; R. at 186-90.

[12] In the Order Denying Reconsideration and Stay, the ALJ concluded that the administrative court retained primary jurisdiction over illegal rent increase claims and the Landlord & Tenant Court should not undertake to adjudicate them. *See* Order Denying Reconsideration and Stay at 1-6; R. at 278-83. The ALJ also ruled that since the Housing Provider failed to raise the issue of res judicata during the hearing, it bars consideration of the issue after the record closed. *Id.* at 6; R. at 278. Further, the ALJ determined Housing Provider was not entitled to reconsideration or a stay, based on the circumstances that allow such actions set forth in the OAH Rules at 1 DCMR §§ 2835 and 2937. *Id.* at 6-10; R at 274-78.

The ALJ amended the following findings of fact:[13]

28. On March 7, 2008, Tenant/Petitioner Harrington took photographs of the conditions within the apartment. PX 102. Tenant/Petitioner Harrington represented that the pictures show the missing floorboards and the cracks in the wall that DCRA inspector Dodson identified in her notices of violations issued on February 2, 2007. I find that the pictures accurately depict the existing conditions of the unit on February 2, 2007, the day of Inspector Dodson's inspection. I also find that the conditions existed for a prolonged period of time, i.e. eleven months since the rent increased as of February 1, 2006 to $652. PX 105. I also find that Housing Provider's failure to cure these conditions displays a deliberate refusal to perform its duties without a reasonable excuse and further demonstrates a heedless disregard of its duties. Tenacity Group is a large property management and asset managing company, which could not have mistakenly or inadvertently overlooked these conditions.

32. On May 19, 2006, Tenant Petitioner Harrington complained to Lula Quadros, the customer service representative about the conditions within her unit. (See Findings of Fact Paragraph No. 21.) I also find that Housing Provider's failure to cure these conditions displays a deliberate refusal to perform its duties without a reasonable excuse and further demonstrates a heedless disregard of its duties. Tenacity Group is a large property management and asset managing company, which could not have mistakenly or inadvertently overlooked these conditions.

Amended Final Order at 8; R. at 311.

The ALJ amended the following conclusions of law:[14]

35. To subject a Housing Provider to penalties under the Act, there must first be a finding that the Housing Provider's conduct in imposing illegal rent increases, substantially reducing services and facilities, and retaliating against Tenants/Petitioners was knowing. I reach this conclusion of knowing conduct on behalf of the Housing Provider because the Housing Provider was placed on notice of the house code violations by the DCRA inspector and also by the Tenant/Petitioner on May 19, 2006, when Harrington complained to Lula Quadros who was not available to rebut the testimony of Harrington. Harrington clearly and convincingly testified that no one came to make the

[13] The Commission has numbered the amended Findings of Fact to correspond with those listed in the Final Order and underlined the amended portion of the Findings of Fact.

[14] The Commission has numbered the amended Conclusions of Law to correspond with those listed in the Final Order and underlined the amended portion of the Conclusions of Law.

repairs, and the conditions depicted in the photographs, PX 102, are the same conditions that existed in 2005. Housing Provider also did not provide any abatement notices indicating the notices of housing code violations issued by Inspector Dodson were ever abated. Therefore, these repairs existed for a prolonged period of time of at least nine months. Such inaction on the part of the Housing Provider warrants imposition of the fines for a willful violation of the Act because its actions constitutes [sic] a deliberate refusal to perform without a reasonable excuse, and a heedless disregard of its duties.

37. To impose such a fine, the Act requires that the violation in question be "willful." Willfulness, in turn, requires more than mere violation of the Act. It requires that the Housing Provider "intended to violate or was aware that it was violating a provision of the Rental Housing Act." *Miller v. D.C. Rental Hous. Comm'n*, 870 A.2d 556, 558 (D.C. 2005). Tenant must show that Housing Provider intended to violate the law or possessed a culpable mental state. *Quality Mgmt. Inc. v. D.C. Rental Hous. Comm'n*, 505 A.2d 73, 76, n.6 (D.C. 1985). Housing Provider's inaction warrants imposition of the fines for a willful violation of the Act for the reasons set forth above. The Housing Provider's actions in failing to fully eradicate the problem since 2005 did rise to the level of being willful, and a reckless disregard for maintaining and leasing an apartment in sanitary condition, i.e. intentional violation of the law, deliberate and the produce [sic] of a conscious choice. *Borger Mgmt*[.], *Inc. v. Miller*, TP 27,445 (RHC Mar. 4, 2004). It also displays a deliberate refusal to perform without a reasonable excuse and a heedless disregard of duty. *See 1773 Lanier Place v. Laurence Drell*[,] TP 27,344 (RHC Sept. 9, 2009).

Amended Final Order at 28-29; R. at 290-91. [15]

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[15] The Commission's regulations provide that:

> The filing of a notice of appeal removes jurisdiction over the matter from the Rent Administrator; provided, that if both a timely motion for reconsideration and a timely notice of appeal are filed with respect to the same decision, the Rent Administrator shall retain jurisdiction over the matter solely for the purpose of deciding the motion for reconsideration, and the Commission's jurisdiction with respect to the notice of appeal shall take effect at the end of the ten (10) day period provided by § 4013.

14 DCMR § 3802.3 (2004). In this case, the record reflects that the Housing Provider filed a Motion for Reconsideration on November 4, 2009. *See* Motion for Reconsideration at 1; R. at 194. In accordance with 1 DCMR § 2937.5 ("If an Administrative Law Judge fails to act upon a motion for reconsideration within the time limit established by section 2937.4, the motion shall be denied by operation of law"), the Commission determines that the Housing Provider's Motion for Reconsideration was denied by operation of law on December 4, 2009, when the ALJ failed to rule on it within thirty (30) days. 1 DCMR §§ 2937.4, 2937.5 (2004); Motion for Reconsideration at 1. Accordingly, the ALJ retained jurisdiction over this matter for the ten (10) day period following December 4, 2009 – the time period under 14 DCMR § 3802.3 (2004) for the Housing provider to file an appeal with the Commission. 14 DCMR § 3802.3 (2004). The Housing Provider filed an appeal with the Commission on December 17, 2009, at which time the ALJ lost jurisdiction over this matter. 1 DCMR §§ 2937.4, 2937.5 (2004).

The Housing Provider filed a Notice of Appeal (Notice of Appeal) on December 17, 2009, in which it raises the following issues:[16]

1. The Housing Provider abundantly supported its arguments that the Tenants' claims are barred by res judicata; therefore the ALJ's denial of the Respondent's Motion for Reconsideration by operation of law was arbitrary, capricious, and not supported by applicable law.

2. The ALJ's finding that Housing Provider's conduct was willful was not supported by findings of fact or conclusions of law; therefore, the ALJ's assessment of a fine against the Housing Provider was arbitrary, capricious, and legally erroneous.

Notice of Appeal at 1-3. The Commission held its hearing on October 13, 2011.

II. ISSUES ON APPEAL[17]

A. Whether the ALJ erred in denying the Housing Provider's Motion for Reconsideration by operation of law, when substantial evidence in the record supports the claim on reconsideration that the Tenants' claims were barred by res judicata.

B. Whether the ALJ's decision to assess fines against the Housing Provider under D.C. OFFICIAL CODE § 42-3509.01(b) (2001), was erroneous because the ALJ's determination of willfulness was not supported by substantial evidence in the record.

III. DISCUSSION OF THE ISSUES

A. Whether the ALJ erred in denying the Housing Provider's Motion for Reconsideration by operation of law, when substantial evidence in the record

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See e.g., Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC Mar. 7, 2008); Watford v. Rink, TP 28,336 (RHC May 11, 2007); Haka v. Gelman Mgmt. Co., TP 27,442 (RHC Feb. 9, 2006).

Based on its review of the record, the Commission determines that the ALJ's Order Denying Reconsideration and Stay and the Amended Final Order entered on December 28, 2009 were entered after the ALJ lost jurisdiction over this matter, and therefore are null and void. 14 DCMR § 3802.3 (2004). Accordingly, both the December 28, 2009 Order Denying Reconsideration and Stay and the Amended Final Order are vacated, and will not be considered by the Commission for the remainder of this Decision and Order.

[16] The Commission observes that the Notice of Appeal combines a statement of each issue on appeal with supporting argument. Accordingly, the Commission summarizes the statement of each issue, and omits the supporting argument.

[17] The Commission, in its discretion, has recast the issues on appeal, consistent with the Housing Provider's language in the Notice of Appeal, but stated in a manner that identifies clearly and accurately the legal grounds under the Act for the Housing Provider's claims of error on appeal. See Ahmed, Inc, RH-TP-28,799 at n.8; Levy, RH-TP-06-28,830; RH-TP-06-28,835 at n.9.

supports the claim on reconsideration that the Tenants' claims were barred by res judicata.

The Housing Provider asserts that under the doctrine of res judicata, a final judgment entered in the Landlord and Tenant Court on September 9, 2008 (case no. 2007 LTB 002093), precludes the Tenants from litigating the claims filed in the Tenant Petition.[18] *See* Notice of Appeal at 2. *See also* Motion for Reconsideration at 3; R. at 192. The Housing Provider raises this defense with respect to all of the Tenants' claims adjudicated before the ALJ: implementing an illegal rent increase, reducing services and facilities, and taking retaliatory action against the Tenants. *See* Notice of Appeal at 2. The Housing Provider contended at the Commission hearing that the defense of res judicata was not raised at the OAH hearing, because at that time the Landlord and Tenant Court had not yet held a hearing, and neither OAH nor the Landlord and Tenant Court had issued a final decision. Hearing CD (RHC Oct. 13, 2011) at 2:21.

The Commission's standard of review of the ALJ's decisions is contained in 14 DCMR § 3807.1 (2004):

> [T]he Commission shall reverse final decisions of the Rent Administrator which the Commission finds to be based upon arbitrary action, capricious action, or an abuse of discretion, or which contains conclusions of law not in accordance with provisions of the Act, or findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator.

14 DCMR § 3807.1 (2004). *See also* 1773 Lanier Place, N.W. Tenants' Ass'n v. Drell, TP 27,344 (RHC Aug. 31, 2009).

The Commission observes that the Housing Provider characterizes and frames this issue in its Notice of Appeal as an appeal from the ALJ's denial of its Motion for Reconsideration. *See* Notice of Appeal at 1. For example, the Housing Provider states in the Notice of Appeal that

[18] The Commission observes that the Housing Provider's Notice of Appeal fails to cite to, or reference any statute, regulation or applicable case law precedent in support of its contentions on this issue.

"the denial of the Respondent's [(Housing Provider's)] Motion for Reconsideration by operation of law was arbitrary, capricious and not supported by applicable law." *See* Notice of Appeal at 2 (emphasis added). The Commission initially notes that it lacks jurisdiction to hear appeals from the denial of a motion for reconsideration, and therefore lacks jurisdiction to consider whether the ALJ erred by denying the Housing Provider's Motion for Reconsideration in this case. *See, e.g.*, 14 DCMR § 4013.3 (2004) ("[t]he denial of a motion for reconsideration shall not be subject to reconsideration or appeal"). *See also* Totz v. D.C. Rental Hous. Comm'n, 474 A.2d 827, 828 (D.C. 1984) (holding that the District of Columbia Court of Appeals (DCCA) lacks jurisdiction to hear an appeal from a denial of reconsideration, but that it will treat an appeal from the denial of a motion for reconsideration as having been taken from the underlying final order) (citing Reichman v. Franklin Simon Corp., 392 A.2d 9, 11 n.3 (D.C. 1978)); Coleman v. Lee Washington Hauling Co., 388 A.2d 44, 45 (D.C. 1978) (citing 901 Corp. v. A. Sandler Co., 254 A.2d 411, 412 (D.C. 1969); De Levay v. Marvins Credit, Inc., 127 A.2d 554 (D.C. 1956)); Washington v. A&A Marbury, LLC, RH-TP-11-30,151 (RHC Dec. 27, 2012) at n.3; Sellers v. Lawson, RH-TP-08-29,437 (RHC Dec. 6, 2012) at n.6.

Furthermore, because the Housing Provider failed to raise the defense of res judicata at the OAH hearing or at any other time prior to the issuance of the Final Order, the ALJ had no opportunity to address the merits of the claim of res judicata as a defense to the claims in the Tenant Petition, either at the OAH hearing or otherwise. *See generally*, Final Order at 1-30; R. at 89-118. *See also,* Totz, 474 A.2d at 828; Coleman, 388 A.2d at 45; Washington, RH-TP-11-30,151 at n.3; Sellers, RH-TP-08-29,437 at n.6. In light of the failure of the Housing Provider to raise its defense of res judicata either at the OAH hearing or at any other time before the ALJ's issuance of the Final Order, the Commission must limit its consideration of the Housing

Provider's res judicata defense to the validity and propriety under the Act of raising this defense for the first time in a Motion for Reconsideration.

The Commission notes initially that the DCCA has held that res judicata is considered an affirmative defense, that is ordinarily waivable if not asserted in the answer to a complaint (or a tenant petition) or timely thereafter. *See* Group Health Ass'n v. Reyes, 672 A.2d 74, 75 (D.C. 1996) (quoting Goldkind v. Snider Bros., Inc., 467 A.2d 468, 471 (D.C. 1983)) (noting that raising the defense for the first time through a motion for directed verdict after all parties had presented their evidence at trial was too late and thereby resulted in a waiver of the defense). *See also* Mitchell v. Gales, 61 A.3d 678, 687 (D.C. 2013) (stating that res judicata is subject to waiver if not raised in the answer or timely asserted thereafter); Wilson v. Holt Graphic Arts, Inc., 981 A.2d 616 (D.C. 2008) (affirming lower court's finding that appellant's res judicata argument was waived). Generally, a party who attempts to raise an affirmative defense, such as res judicata, for the first time on appeal will be barred. *See* Mitchell, 61 A.3d at 687; Goldkind, 467 A.2d at 471 (citing to Fed. R. Civ. P. 8(c) and adopting federal cases' interpretation of the rule); Mann Family Trust v. Johnson, TP 26,191 (RHC Nov. 21, 2005) (citing Johnson v. D.C. Rental Hous. Comm'n, 642 A.2d 135, 139 (D.C. 1994)). The Commission's review of the record reveals, and the Housing Provider does not contest, that the defense of res judicata was not raised at the OAH hearing, or at any other time prior to the Motion for Reconsideration. *See, e.g.,* Notice of Appeal at 1-2; Motion for Reconsideration at 1; R. at 194. Thus, the Commission observes that the Housing Provider's assertion that its Motion for Reconsideration was an appropriate method for raising res judicata for the first time is significantly undermined by the foregoing legal principle holding that the defense of res judicata must raised in a timely manner.

See Mitchell, 61 A.3d at 687; Wilson, 981 A.2d 616; Reyes, 672 A.2d at 75; Goldkind, 467 A.2d at 471.

Even if the Housing Provider's defense of res judicata were not waived, the Commission determines that the Motion for Reconsideration was an inappropriate method for raising the defense of res judicata for the first time. *See* 1 DCMR § 2937 (2004). *See also, e.g.,* 14 DCMR § 3823.2 (2004) ("[t]he motion for reconsideration . . . shall set forth the specific grounds on which the applicant considers the decision and order to be erroneous or unlawful"); Long v. Howard University, 512 F. Supp. 2d 1, 2 (D.D.C. 2007) (stating that a motion for reconsideration under D.C. Superior Court Rule 59(e) is not "'a vehicle for presenting theories or arguments that could have been advanced earlier'") (quoting Burlington Ins. Co. v. Okie Dokie, Inc., 439 F. Supp. 2d 126, 128 (D.D.C. 2006)); Jackson v. Peters, RH-TP-07-28,898 (RHC Feb. 28, 2012) (denying reconsideration where the housing provider failed to set forth specific errors or illegalities in the Commission's decision and order); D.C. Dep't of Consumer & Regulatory Affairs v. Parmer, CR-I-06-I700687 (OAH Dec. 26, 2008) (denying reconsideration where the motion failed to state the substantive grounds for reconsideration under the OAH regulations); D.C. Dep't of Consumer & Regulatory Affairs v. Youngin's Towing & Auto Body, CR-C-07-100057; CR-I-07-S70768 (OAH Nov. 14, 2007) (determining that Respondent could not raise an issue for the first time on reconsideration).

First, the Commission notes that the Motion for Reconsideration failed to comply with the applicable regulation, which provides the following guidelines on motions for reconsideration:

A motion for reconsideration shall be granted only for the following reasons:

(a) if there has been an intervening change in the law;

(b) if new evidence has been discovered that previously was not reasonably available to the party seeking reconsideration;

(c) if there is a clear error of law in the final order;

(d) if the final order contains typographical, numerical, or technical errors; or

(e) if a party shows that there was a good reason for not attending the hearing.

1 DCMR § 2937 (2004) (emphasis added). Based on its review of the record, the Commission is satisfied that the Housing Provider's Motion for Reconsideration does not qualify for relief under any of the five (5) stated reasons under 1 DCMR § 2937 (2004), nor does the Commission observe that the Housing Provider's Motion for Reconsideration asserts the specific grounds, under 1 DCMR § 2937 (2004), on which the Housing Provider is entitled to relief. *See* Motion for Reconsideration at 1; R. at 194.

The Commission observes that by raising the issue of res judicata for the first time in its Motion for Reconsideration, the Housing Provider has frustrated a number of the remedial, administrative, and jurisprudential purposes of res judicata. *See* Smith v. Jenkins, 562 A.2d 610, 615 (D.C. 1989) (quoting Montana v. United States, 440 U.S. 147, 153-54 (1979)). *See also* Gelman Mgmt. Co. v. Campbell, RH-TP-09-29,715 (RHC Dec. 7, 2011); Bedell v. Clarke, TP 24,979 (RHC Apr. 19, 2006); Mann Family Trust, TP 26,191. The fact that two final decisions had been issued by two different adjudicatory bodies (i.e., OAH and the Landlord and Tenant Court), following two different evidentiary hearings, substantially undermines, if not clearly contradicts, the essential purposes of res judicata established by the DCCA, as follows: "to prevent relitigation of claims that [parties] have already had a full and fair opportunity to litigate, thereby protecting adversaries from expensive and vexatious multiple lawsuits, conserving

judicial resources, and minimizing the likelihood of inconsistent outcomes." Smith, 562 A.2d at 615; Gelman Mgmt. Co., RH-TP-09-29,715; Bedell, TP 24,979; Mann Family Trust, TP 26,191.

By raising res judicata for the first time in a motion for reconsideration, the Housing Provider prevented the Tenants from having any meaningful opportunity to contest, and to provide rebuttal evidence regarding, the Housing Provider's assertion that the claims in the Tenant Petition were barred by res judicata, in direct contravention of the safeguards contained in the DCAPA providing a right to a hearing in contested cases. *See* D.C. OFFICIAL CODE § 2-509(b) (2001);[19] 14 DCMR § 3903.1 (2004) ("[t]he parties to petitions before the Rent Administrator have a right to a hearing in accordance with the provisions of the Act . . ."); Richard Milburn Pub. Charter Alt. High Sch. v. Cafritz, 798 A.2d 531, 539 n.7 (D.C. 2002) ("among the procedures required during contested case proceedings are . . . an opportunity . . . to all parties to present evidence and argument"); Washington, RH-TP-11-30,151 (citing Cafritz, 798 A.2d at 539).

Allowing the Housing Provider to raise the defense of res judicata for the first time in its Motion for Reconsideration, thereby depriving the Tenants of any meaningful opportunity to respond to the defense, is also contrary to the stated remedial purposes of the Act, particularly the goals of protecting "low- and moderate-income tenants from the erosion of their income from increased housing costs," and improving "the administrative machinery for the resolution of disputes and controversies between housing providers and tenants." *See* D.C. OFFICIAL CODE

[19] D.C. OFFICIAL CODE § 2-509(b) (2001) provides, in relevant part, as follows:

> . . . Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts . . . .

§ 42-3501.02 (2001);[20] Goodman v. D.C. Rental Hous. Comm'n, 573 A.2d 1293, 1299 (D.C. 1990) (explaining that the Act is remedial in nature and should be liberally construed to achieve its purposes). *See also* Carmel Partners, Inc. v. Fahrenholz, TP 28,273 (RHC Oct. 9, 2012) at n.9 (observing that the due process rights of a tenant must be protected to further the remedial purposes of the Act); Borger Mgmt. v. Lee, RH-TP-06-28,854 (RHC Mar. 6, 2009) (stating that the Act relies on "'lay persons, operating without legal assistance, to initiate and litigate administrative and judicial proceedings'") (quoting Goodman, 573 A.2d at 1299).

Finally, the Commission observes that the Housing Provider has failed to set forth sufficient information in the Motion for Reconsideration to allege a *prima facie* defense of res judicata: that there was a final judgment on the merits, between the same parties, and involving the same claims. *See* EDCare Mgmt. v. Delisi, 50 A.3d 448 (D.C. 2012) ("[u]nder the doctrine of res judicata, 'a final judgment on the merits of a claim bars relitigation in a subsequent proceeding of the same claim between the same parties'") (quoting Patton v. Klein, 746 A.2d 866, 869 (D.C. 1999)); Calomiris v. Calomiris, 3 A.3d 1186, 1190 (D.C. 2010); Taylor v. Bain, TP 28,071 (RHC June 28, 2005) (citing Henderson v. Snider Bros., 439 A.2d 481, 484 (D.C. 1981)); Hines v. Brawner Co., TP 27,707 (RHC Sept. 7, 2004). In particular, the Commission

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[20] D.C. OFFICIAL CODE § 42-3501.02 (2001) provides the following purposes of the Act:

> (1) To protect low- and moderate-income tenants from the erosion of their income from increased housing costs;
>
> (2) To provide incentives for the construction of new rental units and the rehabilitation of vacant rental units in the District;
>
> (3) To continue to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants;
>
> (4) To protect the existing supply of rental housing from conversion to other uses; and
>
> (5) To prevent the erosion of moderately priced rental housing while providing housing providers and developers with a reasonable rate of return on their investments.

notes that the Housing Provider has failed to set forth with any specificity the claims that were raised before the Landlord and Tenant Court. In the Notice of Appeal, the Housing Provider merely states that the Tenants "had an opportunity to assert their claims regarding the alleged substandard housing conditions and retaliation during the notice and non-payment of rent actions . . . ." *See* Notice of Appeal at 2. Similarly, in the Motion for Reconsideration, the Housing Provider contends that the case before the Landlord and Tenant Court was related to the "non-payment of rent." *See* Motion for Reconsideration at 3, 6; R. at 189, 192.

The Commission notes a number of statements by the Housing Provider, made both in documents filed with OAH and at the OAH hearing, that directly contradict any contention that the claims in this case are the same as those adjudicated in the Landlord and Tenant Court. In a Motion to Continue, filed by the Housing Provider with OAH on June 1, 2007, the Housing Provider stated that "[t]he Tenant/Petitioner and the Housing Provider are currently litigants in two (2) other matters in the . . . [Landlord and Tenant Court], namely 2007 LTB 2093 and 2007 CA 1140 (B) . . . both of which concern the Defendant's right to purchase the Premises." Housing Provider's Motion to Continue at 1; R. at 27 (emphasis added). The Commission notes that this case, which involved claims of an illegal rent increase, reduction in services and/or facilities, retaliation, and an improper notice to vacate, *see supra* at 2, did not involve the "Defendant's right to purchase the Premises." *See* Tenant Petition at 1-5; Record (R.) at 7-11.

Similarly, in its "Memorandum of Points & Authorities on Issue of 'Tenancy' in the District of Columbia as Relates to Byron Beckford," filed on May 7, 2008 at the request of the ALJ,[21] the Housing Provider stated the following:

> [A]ny claim that Mr. Beckford was a tenant is a transparent, retaliatory action by Ms. Harrington and Mr. Beckford for the Respondent properly enforcing its right to possession of the Premises in 2007 LTB 002903.

See Memorandum on Tenancy at 3; R. at 82 (emphasis added). The Commission is satisfied that the claims in the Tenant Petition did not involve the right to possession of the premises. *See* Tenant Petition at 1-5; Record (R.) at 7-11.

Finally, the Commission's review of the OAH hearing reveals the following proffer by counsel for the Housing Provider in its opening statement:

> I will note that there is at least one landlord tenant case that is presiding in D.C. Superior Court . . . and it is not subject to a Drayton Stay because rent is not an issue in that case.

Hearing CD (OAH Apr. 21, 2008) at 11:56 (emphasis added). The Commission notes that, while the Housing Provider asserted at the OAH hearing that rent was not an issue in the Landlord and Tenant Court case, the following claims made in the Tenant Petition demonstrate that rent is an issue in this case: "[a] proper 30-day notice of rent increase was not provided before the rent increase became effective," and "[a] rent increase was taken while their unit was not in substantial compliance with the D.C. Housing Regulations." *See* Tenant Petition at 1-5; Record (R.) at 7-11.

As described herein, the Commission notes that the Housing Provider's Motion for Reconsideration, raising res judicata for the first time, was inconsistent with the legal standards

[21] The Commission notes that the ALJ stated at the conclusion of the OAH hearing that she would accept post-hearing briefs from both parties on the issue of Tenant Byron Beckford's tenancy. *See* Hearing CD (OAH Apr. 21, 2008) at 3:04.

for a motion for reconsideration under the Act, defeated the purposes of the defense of res judicata, severely compromised the ability of the Tenants to meaningfully contest its legal merits, raised significant risk of forfeiture of the Tenants' claims in the Tenant Petition, and threatened the remedial purposes of the Act to vindicate the rights of tenants. *See, e.g.*, D.C. OFFICIAL CODE §§ 2-509(b), 42-3501.02 (2001); 1 DCMR § 2937 (2004); 14 DCMR § 3903.1 (2004); Cafritz, 798 A.2d at 539 n.7; Goodman, 573 A.2d at 1299; Smith, 562 A.2d at 615. Furthermore, the Housing Provider has failed to allege sufficient facts to set forth a *prima facie* claim of res judicata. *See* EDCare Mgmt., 50 A.3d 448; Calomiris, 3 A.3d at 1190; Taylor, TP 28,071; Hines, TP 27,707. For the foregoing reasons, the Commission is satisfied that it was neither valid nor proper for the Housing Provider to raise the defense of res judicata for the first time in a motion for reconsideration. *See* D.C. OFFICIAL CODE §§ 2-509(b), 42-3501.02 (2001); 1 DCMR § 2937 (2004); 14 DCMR § 3903.1 (2004); EDCare Mgmt., 50 A.3d 448; Cafritz, 798 A.2d at 539 n.7; Goodman, 573 A.2d at 1299; Smith, 562 A.2d at 615. Therefore, the Commission dismisses this issue on appeal.

B. Whether the ALJ's decision to assess fines against the Housing Provider under D.C. OFFICIAL CODE § 42-3509.01(b) (2001), was erroneous because the ALJ's determination of willfulness was not supported by substantial evidence in the record.

The Housing Provider contends that the ALJ erred by failing to make findings of fact that show willful conduct on the part of the Housing Provider, in support of her imposition of fines. Notice of Appeal at 2-3. The Housing Provider relies on Quality Mgmt. Inc. v. D.C. Rental Hous. Comm'n, 505 A.2d 73, 75-76 (D.C. 1986), and Ratner Mgmt. Co. v. Tenants of Shipley Park, TP 11,613 (RHC Nov. 4, 1988), for the proposition that "findings of intent and conscious choice are necessary . . . to sustain a finding of willfulness." *See* Notice of Appeal at 3.

In the Final Order, the ALJ imposed statutory penalties under D.C. OFFICIAL CODE § 42-3509.01(b) (2001) as follows: "$5,000 for the substantial housing code violations, services and facilities that were reduced, and for the incomplete repairs lasting from 2006-2007;" "$2,000 . . . for taking the illegal rent increase in 2006;" and "$2,000 . . . for Housing Provider's retaliatory conduct in failing to fix the repairs for a period of nine months." *See* Final Order at 29; R. at 90. The ALJ explained that the fines were warranted because the Housing Provider's failure to make repairs to the Tenants' unit rose to the level of being "willful." *See id.* at 28-29; R. at 90-91.

While the Commission employs a very deferential standard with respect to the ALJ's judgment and decisions, "[t]he Commission shall reverse final decisions of the Rent Administrator [or ALJ] which the Commission finds to be based upon . . . findings of fact unsupported by substantial evidence on the record of the proceedings before the Rent Administrator [or ALJ]." 14 DCMR § 3807.1 (2004).

In accordance with the applicable provisions of the DCAPA, D.C. OFFICIAL CODE § 2-509(e) (2001), the Final Order should clearly state the elements of the applicable and appropriate legal test or standard for each claim, and the ALJ should then systematically apply the findings of fact to those tests in order to assure that the conclusions of law "flow or follow rationally" from the findings of fact.[22] *See, e.g.*, Perkins v. D.C. Dep't of Emp't Servs., 482 A.2d 401, 402 (D.C. 1984); Allentruck v. D.C. Minimum Wage & Indus. Safety Bd., 261 A.2d 826, 833 (D.C.

[22] The DCAPA provides, in relevant part, that:

> Every decision and order adverse to a party to the case . . . shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence . . . .

D.C. OFFICIAL CODE § 2-509(e) (2001). *See* Butler-Truesdale v. Aimco Props., LLC, 945 A.2d 1170, 1171 (D.C. 2008).

1969) (explaining that a decision will follow from the application of the facts to the statutory criterion); Albemarle Tenants Ass'n v. Albemarle Towers Co., CI 20,523 (RHC June 25, 1992) (stating that the findings of fact must lead to a conclusion of law under the governing statute); Jackson, RH-TP-07-28,898; John v. Henson, TP 20,935 (RHC Sept. 23, 1991). In order to facilitate the Commission's review, the ALJ must make citations to the testimony, documents, or other evidence from the OAH record that form the basis for each finding of fact. *See* Pena v. Woynarowsky, RH-TP-06-28,817 (RHC Feb. 3, 2012) (citing Georgetown Univ. Hosp. v. D.C. Dep't of Emp't Serv., 916 A.2d 149, 151-52 (D.C. 2007)).

The "Penalties" provision of the Act provides that:

> Any person who wilfully (1) collects a rent increase after it has been disapproved under this chapter, until and unless the disapproval has been reversed by a court of competent jurisdiction, (2) makes a false statement in any document filed under this chapter, (3) commits any other act in violation of any provision of this chapter or of any final administrative order issued under this chapter, or (4) fails to meet obligations required under this chapter shall be subject to a civil fine of not more than $ 5,000 for each violation.

D.C. OFFICIAL CODE § 42-3509.01(b) (2001). The DCCA has explained that the Act permits the imposition of fines for a violation of the Act, depending on the "'nature of the violation' and on the offender's 'state of mind.'" *See* Washington Cmtys. v. Joyner, TP 28,151 (RHC July 22, 2008) (quoting Miller v. D.C. Rental Hous. Comm'n, 870 A.2d 556, 558 (D.C. 2005)). Specifically, the Act requires a finding that a violation was "willful" before fines may be imposed. *See* D.C. OFFICIAL CODE § 42-3509.01(b) (2001).

The Commission and the DCCA define willfully as "a more culpable mental state than the term 'knowingly.'" *See* Miller, 870 A.2d at 559; Quality Mgmt., Inc., 505 A.2d at 75 n.6; Joyner, TP 28,151 at 13. Additionally, the Act differentiates between "willfully" and "knowingly" in that "willfully" goes to the intent to violate the law. Quality Mgmt., Inc., 505

A.2d at 75 n.6. *See also* Recap v. Powell, TP 27,042 (RHC Dec. 19, 2002) (stating that the term "willfully" requires an intention to violate the Act); Ratner Mgmt. Co., TP 11,613 (explaining that the Act places a heavier burden under D.C. OFFICIAL CODE § 42-3509.01(b) (2001) of showing that a housing provider's conduct was "intentional, or deliberate, or the product of a conscious choice"). In order to find willfulness, and thus impose a fine on a party, the ALJ must make specific findings of fact that "the housing provider intended to violate the Act or at least knew that it was doing so, from which the intent to do so could be inferred." Miller, 870 A.2d at 559.

The Commission has noted that an ALJ's discretion regarding the imposition of fines is guided by the statutory maximum of $5,000. D.C. OFFICIAL CODE § 42-3509.01(b) (2001); Joyner, TP 28,151 at 17. The Commission relies on an ALJ's knowledge, experience, expertise and discretion in imposing fines, when those fines flow rationally from, and are based upon substantial record evidence. *See* Joyner, TP 28,151 at 17 (citing Bernstein v. Estrill, TP 21,792 (RHC Aug. 12, 1991) at 5; Borgner v. Woodson, TP 11,848 (RHC June 10, 1987) at 11-15).

Based on its review of the record, the Commission is unable to determine that the ALJ's imposition of fines is supported by substantial evidence. *See* 14 DCMR § 3807.1 (2004). The Commission's review of the Final Order reveals that, in support of her determination that "Housing Provider's inaction [in failing to eradicate the housing code violations] warrants imposition of . . . fines," the ALJ stated only that the Housing Provider did not "provide any abatement notices" indicating that the housing code violations were abated.[23] *See* Final Order at 28; R. at 91.

[23] The Commission notes that the issuance of abatement notices by DCRA is not a requirement under the Act, its regulations, or the District's Housing Code. *See generally*, D.C. OFFICIAL CODE §§ 42-3502.08(a)(1)(A), -

However, despite the lack of evidence of abatement notices in the record, the Commission observes that the ALJ made the following undisputed findings of fact regarding the Housing Provider's specific efforts to make repairs in the Tenants' unit:

> 15. The Housing Provider/Respondent contracts with a pest control company that sprays the Property twice a month . . . .
>
> 16. Tenants/Petitioners noticed rats in the unit in December 2005 . . . . The landlord laid traps, put black boxes inside the unit as well as outside of the building, and sprayed foam inside the unit . . . .

See Final Order at 5; R. at 114. Furthermore, the ALJ made the following conclusions of law regarding the Housing Provider's specific efforts to make repairs in the Tenants' unit:

> 14. . . . Harrington had inconsistent testimony as to whether any of the conditions she complained of were fixed. She claims numerous times in her testimony nothing was fixed, but she conceded that whenever there was a leak in the ceiling it was fixed . . . .
>
> 15. Additionally, Harrington testified that in 2005, she saw rats in the unit and that the Housing Provider sprayed the unit and laid traps, causing the rats to eventually go away . . . .

See Final Order at 16; R. at 103 (emphasis added). The Commission notes that, despite these findings of fact and conclusions of law, the ALJ fails to mention, or otherwise reference, the Housing Provider's attempts to make repairs in the Tenants' unit in her discussion regarding the imposition of fines, and whether the Housing Provider's conduct was willful. *See* Final Order at 26-29; R. at 90-93.

3509.01(b) (2001); 14 DCMR §§ 400 *et seq.*, -4216 (2004). In the absence of such statutory or regulatory requirement, there is no other standard or rule that provides that the only acceptable evidence to prove abatement of a housing code violation is an abatement notice, nor does the ALJ cite to or reference any such rule in the Final Order. *See* Final Order at 12-18; R. at 101-107. The Commission observes that the mere absence of an abatement notice, without specific findings on the Housing Provider's intent to violate the Act, does not constitute substantial evidence to support the ALJ's determination of willfulness. *See* Miller, 870 A.2d at 559; Quality Mgmt., Inc., 505 A.2d at 75 n.6; Joyner, TP 28,151 at 13; Recap, TP 27,042; Ratner Mgmt. Co., TP 11,613.

The Commission observes that while the ALJ provided a brief discussion on the legal standard for willfulness, and cited to the relevant provision of the Act, D.C. OFFICIAL CODE § 42-3509.01(b) (2001), the ALJ failed to systematically apply the findings of fact to the legal standard for willfulness. *See* Final Order at 26-29; R. at 90-93. Specifically, the Commission observes that the ALJ failed to make any conclusions of law regarding whether the Housing Provider's actions in illegally increasing the Tenants' rent, failing to abate the housing code violations, and taking retaliatory action against the Tenants, constituted an intent to violate the Act. *See* Miller, 870 A.2d at 559; Quality Mgmt., Inc., 505 A.2d at 75 n.6. *See also* Shipe v. Carter, RH-TP-08-29,411 (RHC Sept. 18, 2012) (concluding the ALJ correctly found an intent to violate the Act when a housing provider posted a Craigslist advertisement for an apartment one week after ordering tenant to vacate for the housing provider's "own use and occupancy").

Accordingly, the Commission vacates the $5,000 fine based on "substantial housing code violations, services and facilities that were reduced, and for the incomplete repairs," vacates the $2,000 fine based on "taking the illegal rent increase in 2006," and vacates the $2,000 fine based on "retaliatory conduct in failing to fix the repairs for a period of nine months." *See* Final Order at 29; R. at 138. The Commission remands to OAH for the ALJ to make further conclusions of law, regarding whether the imposition of fines is appropriate in this case related to any of the violations of the Act identified in the Final Order, consistent with this Decision and Order. Specifically, if the ALJ determines that fines are appropriate for any of the violations in the Final Order, the ALJ should address whether the Housing Provider's conduct constituted willfulness, *see* D.C. OFFICIAL CODE § 42-3509.01(b) (2001); Miller, 870 A.2d at 559; Quality Mgmt., Inc., 505 A.2d at 75 n.6; Joyner, TP 28,151 at 13, and the ALJ should indicate the specific record evidence that supports such a determination, for each violation of the Act for which the ALJ is

imposing a fine (i.e., illegal rent increases, reduction in services and/or facilities, or retaliatory conduct).[24] *See* D.C. OFFICIAL CODE § 42-3509.01(b) (2001); Miller, 870 A.2d at 559; Quality Mgmt., Inc., 505 A.2d at 75 n.6; Joyner, TP 28,151.

IV. PLAIN ERROR

While the Commission's review of an issue is typically limited to the issues raised in the notice of appeal, it may always correct "plain error." 14 DCMR § 3807.4 (2004). *See also,* Lenkin Co. Mgmt. v. D.C. Rental Hous. Comm'n, 642 A.2d 1282, 1286 (D.C. 1994); Proctor v. D.C. Rental Hous. Comm'n, 484 A.2d 542, 550 (D.C. 1984) (holding that the Commission, under its rules, is permitted, though not required, to consider issues not raised in notice of appeal insofar as they reveal "plain error"). *See, e.g.,* Munonye v. Hercules Real Estate Servs., RH-TP-07-29,164 (RHC July 7, 2011) (finding "plain error" in a hearing examiner's failure to comply with substantive and procedural provisions of the Act, the DCAPA and/or prior case law of the DCCA under the Act); Drell, TP 27,344 (finding "plain error" in ALJ's failure to make requisite and sufficient findings of fact on "willfulness" to support the imposition of fines pursuant to D.C. Official Code § 42-3509.01(b) (2001)); Ford v. Dudley, TP 23,973 (RHC June 3, 1999) (finding "plain error" in a hearing examiner's erroneous use of the "clear and convincing" evidence standard rather than the statutorily-required "preponderance of evidence" standard).

A. Whether the ALJ committed plain error by determining that the 2006 rent increase was taken at a time when the Tenants' unit was not in substantial

[24] The Commission further notes that the amount of rent refunds and rollbacks awarded to the Tenants totals $1,529.28, while the statutory fines imposed upon the Housing Provider under the Penalties provision of the Act total $9,000. Final Order at 30; R. at 89. If the ALJ determines on remand that the imposition of fines is warranted, the Commission notes the prevailing rule in this jurisdiction that the amount of a fine should be in proportion to the seriousness of the offense, and any damages awarded as the result of such offense. *See* James v. United States, 59 A.3d 1233, 1238 (D.C. 2013); One 1995 Toyota Pick-Up Truck v. District of Columbia, 718 A.2d 558, 564 (D.C. 1998) (explaining that under the Eighth Amendment, excessive fines are unconstitutional because the gravity of the offense must be proportional to the severity of the punishment).

compliance with the D.C. Housing Regulations, under D.C. OFFICIAL CODE § 42-3502.08(a)(1) (2001).

In the Final Order, the ALJ determined that the Tenants' rent was illegally increased on February 1, 2006, at a time when the Tenants' unit was not in substantial compliance with the D.C. housing regulations, that the Housing Provider was on notice of housing code violations at the time the rent increase went into effect, and that the housing code violations were substantial. *See* Final order at 12-18; R. at 101-107 (citing D.C. OFFICIAL CODE §§ 42-3501.03(35), 3502.08(a)(1) (2001); 14 DCMR § 4216 (2004); Gavin v. Fred A. Smith Co., TP 21,918 (RHC Nov. 18, 1992) at 4; William Calomiris Inv. Corp. v. Milam, TP 20,144, 20,160, 20,248 (RHC Apr. 26, 1989) at 10). In support of this determination, the ALJ found that the Housing Provider increased the Tenants' rent from $595 per month, to $652 per month, effective February 1, 2006. *See id.* at 15, 17; R. at 102, 104 (citing PX 105). Furthermore, the ALJ found that Tenant Harrington had informed the Housing Provider about conditions in the Tenants' unit that needed repairs in April and May of 2006. *See id.* at 15, 17; R. at 102, 104.

The Commission notes that D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A) (2001) provides, in relevant part, the following: "the rent for any rental unit shall not be increased above the base rent unless: (A) The rental unit and the common elements are in substantial compliance with the housing regulations . . . ." Furthermore, the Commission has held that, if a housing provider is first notified of the existence of housing code violations after the effective date of a rent increase, the rent increase is valid. *See* H.G. Smithy Co. v. Alston, TP 25,033 (RHC Sept. 30, 2003) (reversing a hearing examiner's invalidation of a rent increase, based on the existence of housing code violations, where the record reflected that the housing provider had not been notified of the housing code violations at the time of the increase) (citing Gavin, TP 21,918); Ford, TP 23,973

(stating that if a housing provider is first notified of housing code violations after a rent increase, the rent increase is valid).

The Commission will reverse an ALJ's decision if it is unsupported by substantial record evidence, if the conclusions of law are not in accordance with the provisions of the Act, or where the conclusions of law do not flow rationally from the findings of fact. 14 DCMR § 3807.1 (2004). *See also* Perkins, 482 A.2d at 402; Allentruck, 261 A.2d at 83; Albemarle Tenants Ass'n, CI 20,523; Jackson, RH-TP-07-28,898).

Based on its review of the record, the Commission determines that it was plain error for the ALJ to conclude that a rent increase was taken at a time when the Tenants' unit was not in substantial compliance with the housing regulations, because the substantial evidence does not support a determination that the Housing Provider was on notice of the housing code violations at the time of the rent increase. *See* D.C. OFFICIAL CODE § 42-3502.08(a)(1)(A) (2001); H.G. Smithy Co., TP 25,033; Ford, TP 23,973. Specifically, the Commission observes that the ALJ's finding that the effective date of the rent increase (February 1, 2006) occurred at least two (2) months prior to the time that the ALJ found the Housing Provider was put on notice of housing code violations (April and May of 2006), does not reasonably lead to the conclusion that the Housing Provider was on notice of housing code violations at the time of the rent increase. *See* Final Order at 17; R. at 150. Accordingly, the Commission reverses the ALJ's determination that the February 1, 2006 rent increase was taken while the Tenants' unit was not in substantial compliance with the housing regulations, and vacates the rent rollback and rent refund that were

awarded as a result of the ALJ's erroneous determination on this issue.[25] *See* Final Order at 17-18, 28-29; R. at 138-39, 149-50.

B. Whether the ALJ committed plain error in her calculation of damages for the reduction in facilities related to the Tenants' defective refrigerator.

The Commission observes that in calculating damages for a reduction in facilities related to a defective refrigerator, the ALJ assigned a value to the reduction of $20 per month and subtracted that amount from the Tenants' rent charged for the period from May 2006 through February 12, 2007. *See* Final Order at 21; R. at 98. The Commission notes that the Act was amended, effective August 5, 2006 by the "Rent Control Reform Amendment Act of 2006," D.C. Law 16-145 (Aug. 5, 2006), which amended the Act by eliminating the term "rent ceiling," and in its place, substituting the term "rent charged." *See* D.C. OFFICIAL CODE § 42-3502.06(a) (2001 Supp. 2008). *See* D.C. Law 16-145 §§ 2(a) & (c), 53 D.C. Reg. at 4889, 4890 (2006).

The Commission notes that prior to the amendment of the Act on August 5, 2006, the remedy for a reduction in services and/or facilities was an increase or decrease in the rent ceiling rather than the rent charged, and a tenant could only recover for a reduction in services and/or facilities if the rent charged exceeded the reduced rent ceiling. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001) (hereinafter, "pre-August 5 provision of § 42-3502.11").[26] After August 5, 2006, the remedy for a reduction in services and/or facilities is an increase or decrease directly to the

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[25] The Commission notes that, although the ALJ imposed fines related to the determination that the rent was increased while the Tenants' unit was not in substantial compliance with the housing regulations, the Commission has already vacated those fines on other grounds. *See supra* at 36-42.

[26] D.C. OFFICIAL CODE § 42-3502.11 (2001) provides the following:

> If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent ceiling, as applicable, to reflect proportionally the value of the change in services or facilities.

rent charged to reflect the value of the reduction. *See* D.C. OFFICIAL CODE § 42-3502.11 (2001 Supp. 2007) (hereinafter "post-August 5 provision of § 42-3502.11").[27]

Although the ALJ cited in the Final Order to both the pre-August 5 provision of § 42-3502.11 and the post-August 5 provision of § 42-3502.11, as the basis for her calculation of the rent refund resulting from a reduction in services and/or facilities, the Commission observes that the ALJ mistakenly failed to calculate any rent refund from May 2006 to August 4, 2006 on the basis of the pre-August 5 provision of § 42-3502.11 in determining her award of a $20 refund for that period of time. *See* Final Order at 18-19; R. at 100-101.

Accordingly, the Commission determines that it was plain error for the ALJ to calculate the Tenants' rent refund from May 2006 to August 4, 2006 on the basis of the post-August 5 provision of § 42-3502.11. *Compare* D.C. OFFICIAL CODE § 42-3502.11 (2001), *with* D.C. OFFICIAL CODE § 42-3502.11 (2001 Supp. 2007). In order to comply with the pre-August 5 provision of § 42-3502.11, the ALJ may only issue a rent refund for the period of May 2006 through August 4, 2006 if the $20 award for the defective refrigerator decreased the rent ceiling to a value below the rent charged, and the Tenants are then only entitled to the difference between the two values. *See* D.C. OFFICIAL CODE § 42-3502.11 (2011).

Accordingly, the Commission remands this issue for the ALJ to adjust her calculations of the Tenants' rent refunds for the period between May 2006 and August 4, 2006 to reflect the version of the Act that was in effect during that period, as described *supra*. *See* D.C. OFFICIAL

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[27] D.C. OFFICIAL CODE § 42-3502.11 (2001 Supp. 2007) provides the following:

> If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the rent charged, as applicable, to reflect proportionally the value of the change in services or facilities.

CODE § 42-3502.11 (2001). Furthermore, the Commission instructs the ALJ on remand to make further findings of fact regarding the specific date in May 2006 that the Tenants' entitlement to a rent refund for a reduction in services and/or facilities arising out of the defective refrigerator began. *See* Marbury Plaza, LLC v. Banks-Logan, TP 24,901 (RHC Nov. 14, 2000) (affirming hearing examiner's determination that an award of damages arising out of a reduction in services and/or facilities should commence on the date that the housing provider was first on notice of the reduction); Gelman Co. v. Jolly, TP 21,451 (RHC Oct. 25, 1990) (determining that the hearing examiner erred by awarding damages related to a reduction in services and/or facilities for a period of time prior to the date that the housing provider was first put on notice of the reduction).

If, on remand, the ALJ determines that further factual development is necessary in order to determine the rent ceiling in place from May 2006 through August 4, 2006, or the precise date in May 2006 that the Tenants' entitlement to damages arising out of the defective refrigerator began, the ALJ may, in her discretion, hold an evidentiary hearing limited to the foregoing legal standards.

V. CONCLUSION

In accordance with the foregoing, the Commission concludes as follows: (1) the Commission dismisses the Housing Provider's claim of res judicata on appeal, *see* Mitchell, 61 A.3d at 687; Wilson, 981 A.2d at 616; Reyes, 672 A.2d at 75; Mann Family Trust, TP 26,191; (2) the Commission vacates the $9,000 in fines imposed on the Housing Provider, and remands to OAH for the ALJ to make further conclusions of law, regarding whether the imposition of fines is appropriate in this case, consistent with this Decision and Order, s*ee* D.C. OFFICIAL CODE § 42-3509.01(b) (2001); Miller, 870 A.2d at 559; Quality Mgmt., Inc., 505 A.2d at 75 n.6; Joyner, TP 28,151 at 13; (3) the Commission reverses, under the plain error standard, the ALJ's

determination that the February 1, 2006 rent increase was taken while the Tenants' unit was not in substantial compliance with the housing regulations, and vacates the rent rollback and rent refund that were awarded as a result of the ALJ's erroneous determination on this issue, *see* H.G. Smithy Co., TP 25,033; Ford, TP 23,973; and (4) the Commission determines that the ALJ committed plain error by calculating the Tenants' rent refund arising out of a reduction in services and/or facilities for the period of May 2006 through August 4, 2006 based on the post-August 5 provision of § 42-3502.11, *see* D.C. OFFICIAL CODE § 42-3502.11 (2001 Supp. 2007), and remands this issue for the ALJ to adjust her calculations of the Tenants' rent refunds for the period between May 2006 and August 4, 2006 to reflect the pre-August 5 provision of § 42-3502.11, as described *supra*, *see* D.C. OFFICIAL CODE § 42-3502.11 (2001).

If, on remand, the ALJ determines that further factual development is necessary in order to make conclusions of law regarding the imposition of fines, or to determine the rent ceiling in place from May 2006 through August 4, 2006, the ALJ may, in her discretion, hold an evidentiary hearing limited to the foregoing legal standards.

SO ORDERED

PETER B. SZEGEDY-MASZAK, CHAIRMAN

RONALD A. YOUNG, COMMISSIONER

MARTA W. BERKLEY, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR §3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **DECISION AND ORDER** in RH-TP-07-28,895 was mailed, postage prepaid, by first class U.S. mail on this 27th **day** of **September, 2013** to:

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